UNITED
NATIONS

TD

United Nations Conference
on Trade and Development

Distr.
LIMITED

TD/B/RBP/L.61/Add.1
21 October 1993

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Intergovernmental Group of Experts
on Restrictive Business Practices
Twelfth session
Geneva, 18 October 1993

**DRAFT REPORT OF THE INTERGOVERNMENTAL GROUP OF EXPERTS ON RESTRICTIVE BUSINESS PRACTICES ON ITS TWELFTH SESSION**

Rapporteur: Mr. A. Brahime (Morocco)

**AGENDA ITEMS 3, 4 AND 5** (continued)

Speakers: China, Romania, Jamaica, Ghana, Venezuela, Argentina, Netherlands, Italy, Spain, Russian Federation, Sri Lanka, Poland, Republic of Korea, Ethiopia, France

**Note for Delegations**

This draft report is a provisional text circulated for clearance by delegations.

Requests for amendments - to be submitted in English or French - should be communicated by Friday, 26 October 1993 at the latest to:

The UNCTAD Editorial Section
Room E.8106
Fax No. 907 0056
Tel. No. 907 5657 or 5655

GE.93-54064

## Chapter I

**REVIEW OF THE OPERATION OF AND EXPERIENCE ARISING FROM THE APPLICATION AND IMPLEMENTATION OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES**

(Agenda item 3)

**ACTIVITIES RELATING TO SPECIFIC PROVISIONS OF THE SET:**

**(a) STUDIES ON RESTRICTIVE BUSINESS PRACTICES RELATED TO THE PROVISIONS OF THE SET OF PRINCIPLES AND RULES;**

**(b) INFORMATION AND CONSULTATIONS ON RESTRICTIVE BUSINESS PRACTICES;**

**(c) THE MODEL LAW OR LAWS FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES, AND THE HANDBOOK ON RESTRICTIVE BUSINESS PRACTICES LEGISLATION;**

**(d) TECHNICAL ASSISTANCE, ADVISORY AND TRAINING PROGRAMMES ON RESTRICTIVE BUSINESS PRACTICES**

(Agenda item 4)

**WORK PROGRAMME ON RESTRICTIVE BUSINESS PRACTICES**

(Agenda item 5)

(continued)

23. The representative of **China** described the recent law against unfair competition adopted on 2 September 1993 for entry into force on 1 December 1993. The new legislation was in conformity with the Set of Principles and Rules, and took into account both the specific situation of China and the experiences of other countries. It was aimed at guaranteeing the healthy development of a socialist market economy and encouraging and protecting fair competition, in the interest of enterprises and consumers. It proscribed unfair business practices by firms and such measures by government authorities as granting exclusive rights to firms or segregating local markets. The law also clarified the department

responsible for its administration. Enactment of the law demonstrated the resolve of the Chinese Government to speed up the pace of economic legislation and reform, in line with the broadening of China's foreign trade. In formulating the new law, China had received technical assistance from UNCTAD and UNDP, and from a number of countries. Further cooperation with countries with experience in the area of effectively controlling restrictive business practices would be welcomed. The UNCTAD secretariat should also continue to explore the possibilities of providing technical assistance.

24. The representative of **Romania** gave a brief account of the progress made in his country's towards transition to a market-oriented economy, begun in 1989. The Government was firmly committed to economic reform notwithstanding the difficulties faced. Most of the legal framework was now in place and ready for implementation. In February 1993 parliament had approved a revised economic reform programme that set out tighter macroeconomic policies and reaffirmed the Government's commitment to effective micro-economic reforms and industrial restructuring. A distinct chapter of this programme was devoted to the promotion of competition in the Romanian economy directly related to continued reduction of the absolute dominance of the State sector. Although various laws regulated competition issues, there was no comprehensive unifying competition policy that would be totally harmonized with the regulations of the European Community, hence the Government had submitted to the parliament a draft law on safeguarding competition, inspired by the legislation of countries with a market-economy tradition and harmonized in line with regulations of the European Community, particularly articles 85 and 86 of the Treaty of Rome. In preparing this draft law, valuable assistance had been given by experts from OECD, EFTA, the Commission of the European Communities, as well as from competition authorities of Belgium, France, Germany and the United States. UNCTAD's Model Law or Laws and the Handbook on Restricted Business Practices Legislation had also been very useful in this regard.

25. The representative of **Jamaica** stated that the enactment of the Fair Competition Act in his country in March 1993 had represented the culmination of a three-year period of dialogue and consultation among various economic sectors. The Act prescribed remedies for problems anticipated with advancing liberalization and deregulation of the Jamaican economy, a process that had intensified over the past 15 years. The Fair Competition Act sought to achieve two objectives: (a) to create a competitive environment where market forces could compete freely and fairly; and (b) to provide consumers with specific benefits which they did not have before. The Act had wide application: to private as well as public sectors, and to both persons and businesses involved

in the production of goods and services. The main problems facing Jamaica in terms of anti-competitive practices were price fixing, operation of cartels, collusive tendering and bid-rigging. The Competition Act dealt with these problems. Monopolies were not singled out for special treatment: in a small economy, firms had to achieve a certain size for profitable economies of scale. Hence it was not the structure which was addressed but rather behaviour. Bad behaviour would be punished. Abuse of a dominant market position would engender sanctions.

26. The representative of **Ghana** stated that his country had benefited from UNCTAD's technical assistance in the area of restrictive business practices. Ghana's Trade Practices Bill had already won government approval and was currently before the parliament for adoption. UNCTAD's technical assistance had been implemented under a three-phase programme which started with an introductory seminar on restrictive business practices, followed by preparation of a draft competition law, which was open for comment by local, foreign and UNCTAD experts. The final phase of UNCTAD's technical assistance was a successful seminar held for Ghana's business community in April 1993 to publicize the law. The assistance of experts from Germany and the United Kingdom in training Ghanian officials on the control of restrictive business practices had been greatly appreciated.

27. The representative of **Venezuela** expressed regret that it had not been possible to reflect on the documentation which was unavailable prior to the meeting. His delegation wished to associate itself with those who had spoken on this subject. He then outlined his country's competition policy, which had drawn upon that of others, including the United States and the European Community. Venezuela's competition policy aimed at economic liberalization: Free competition was a public good. The Law for the Promotion and Safeguarding of the Exercise of Free Competition had created a competition authority named "pro-Competencia". He summarized the Venezuelan experience concerning restrictive agreements, mergers, deregulation and natural monopolies, then highlighted the efforts of Pro-Competencia to publicize the principles of competition to the public sector and in entrepreneurial, consumer and academic circles, since it was impossible to uphold competition policy if the society concerned did not believe in it. Hence it was necessary to create a culture in favour of free competition. Venezuela would welcome the adoption of an international statute on competition that would regulate transfrontier practices; it could be undertaken in parallel with international measures for addressing the new protectionism of certain countries which applied anti-dumping and anti-subsidy measures in a discriminatory fashion. In conclusion, he expressed

appreciation for the technical cooperation provided by UNCTAD, as well as by the Governments of Germany, Spain and the United States.

28. The representative of **Argentina** referred to his country's new trade policy, which aimed at an open economy. Measures had been taken to liberalize prices, reduce tariff barriers and deregulate the economy. Although these measures would strengthen competition, they might at the same time provide an incentive to some economic agents to avoid the effects of competition. In this perspective, it was important to have legislation aimed at ensuring that a competitive system would prevail. He outlined his country's competition law, the powers of its Competition Commission, and recent legislative measures. There was now a need to amend the law, particularly in relation to procedures concerning agreements, determination of the relevant market, merger control, notifications, fines, divestiture and the identification of criminal offences. The Mercado Común del Sur (MERCOSUR) had decided to adopt a Common Statute on Competition for those cases in which competition had transborder effects; the member States of MERCOSUR were discussing the broad outlines of such a statute. Finally, he expressed appreciation for the work of UNCTAD on competition policy, which would be taken into account in the elaboration of relevant policy in Argentina.

29. The representative of the **Netherlands** stated that the competition policy regime in his country was based on the principle that enterprises were free to enter into cartels and free to concentrate and form a dominant position by way of mergers. Even abuses of a dominant position were not prohibited a priori. However, since the beginning of the 1990s, the Government had begun to change its economic policy of laissez-faire with respect to restrictive business practices in a rather drastic way and instituted a legislative programme to bring Dutch law in line with that of other European Community and OECD countries. This was being done not only for economic reasons; the Government was convinced that in an internationalizing, globalizing world, national enterprises were going to be punished or rewarded not only in terms of their own efficiency of production and distribution but also with regard to costs and quality of services and intermediate goods purchased from the so-called sheltered sectors of the economy. The only mechanism known that guaranteed the best quality and diversity at the lowest cost was competition. To this end several measures had been adopted. Among the short-term measures envisaged were prohibition against price-fixing, cartels and collusive-tendering. As for the medium-term, a new Competition Law would be drafted, based on general prohibition principles and reinforced by an adequate policy implementation infrastructure. Finally an assessment would be made of all legislation containing economic regulation.

30. The representative of **Italy** stated that Italian competition authority had been increasingly active in the advocacy programme and had been aggressive in pursuing cases against dominant firms which abused their protected or public status or took advantage of their position to extend dominance over other markets. The authority had pressed for the abolition of monopoly concessions in markets which had evolved enough to make competition possible, and for setting limits on the powers of statutory monopolies. In this regard, particular emphasis had been placed on telecommunications sector and on the ports and airports. Although the authority had examined many mergers, it had intervened in only a few; interventions against abuses of dominant position had been more numerous, particularly with respect to statutory monopolies. As regards restrictive agreements, intervention had mainly been directed against horizontal restrictive business practices. The competition law had been widely publicized in the business community but even after deregulation and price liberalization, producers and distributors were still able to engage in restrictive business practices. Governments needed to monitor such behaviour. This was a problem that UNCTAD might investigate.

31. The representative of **Spain** said that Spanish Competition Law had remained unchanged since 1989. It has been developed through several decrees concerning notifications in the field of mergers and the adoption of bloc exception rules in line with the European Community regulations. Spain had favoured, in principle, the deregulation process rather than privatization. In this way attention was focused on the competitive behaviour of markets independently from the ownership of enterprises. A recent study carried out by the Tribunal for the Safeguard of Competition dealt with the competitive situation of various service sectors, identifying those in which regulation had created inefficiency in the allocation of resources. Finally, concerning technical cooperation, he cited the visit of Venezuelan officers to the premises of the Spanish competition authorities and expressed the wish for further cooperation on legislation and competition policy, particularly with those countries having close cultural links.

32. The representative of the **Russian Federation** provided a breakdown of the types of restrictive business practices against which her country's competition authority had undertaken enforcement action. Establishing competition rules in Russia in the context of transition towards a market economy was a complex task. It was now necessary to reform the law; this would include refining the concept of the market and of dominant position, as well as by strengthening sanctions. The study TD/B/RBP/80/Rev.2 had provided detailed and useful information on trends in international market concentration, foreign investment and the role

of transnational firms, relating the effects of competition instruments to other policy instruments. A further study on this subject was urgent, as it was relevant to the question of links between competition and trade. Russia supported strengthening the relationship between competition rules and GATT. The study TD/B/RBP/96 was satisfactory and her Government would be submitting comments on it in the near future.

33. The representative of **Sri Lanka** drew attention to the great emphasis his Government had placed on creating a market economy and the serious encouragement it was giving to foreign investors. Recent amendments to the Fair Trading Commission Act of 1987 had introduced a pre-notification requirement for mergers. The amendments also gave the Commission new powers to examine merger situations on its own initiative. Activities of the Commission in the past year included an investigation of two monopolies over the production, distribution and sale of oxygen, and over the safety match industry, as well as identification of various monopoly situations regarding goods and services. Two complaints relating to "dumping" of liquid glucose and of steel had been investigated, but no action was deemed necessary. The study TD/B/RBP/96 had been very useful in examining the rate of competition policy in economic reforms in developing and other countries. Three reports proposing reforms to Sri Lanka's Competition Law were under consideration and could be informally discussed by the Group of Experts.

34. The representative of **Poland** referred to proposed amendments to the Polish Antimonopoly Act, aimed at refining definitions of monopolistic and dominant positions, and setting out rules for merger control. UNCTAD's Model Law had contributed to the elaboration of these proposed amendments. Legislation on unfair competition had recently been adopted. Extensive cooperation and/or consultations had been undertaken with Germany, the United Kingdom, United States, EC and OECD, as well as with countries from Central and Eastern Europe.

35. The representative of the **Republic of Korea** described recent changes in his country's competition law, aimed at mitigating the economic power of large corporate groupings known as "*jaebol*". Controls had been strengthened on cross-shareholding, intra-corporate loan guarantees and unfair provisions in subcontracting. Advocacy efforts aimed at deregulating the economy had been pursued. International cooperation and coordination on competition issues were necessary as it was important that every country should promote free and fair competition both internally and externally. To this end, dialogue on a common understanding of competition policy within UNCTAD and the OECD should be pursued.

36. The representative of **Ethiopia** stated that the adoption of a market economy model by the transitional government had led to the introduction of a number of important legislative measures. The Public Enterprise Proclamation No. 25 of 1992, which had given autonomy to public enterprises but had deprived them of the protection and subsidy to which they had been entitled in the past was one of the legislative measures which had proved successful. Other measures had been taken relating to labour and investment which had made a considerable contribution towards the successful implementation of Ethiopia's structural adjustment programme. While the Government had privatized some public enterprises it had on the other hand liquidated others. Attention was called to the question of developing private capital markets, which both technically and financially, called for international assistance.

37. The representative of **Franco** praised the quality of the secretariat's documentation but deplored its lateness. He then went on to describe French competition law which was based on two fundamental principles: open competition and fair trade practices. Recent amendments to control abusive delays in payments of debts and to improve transparency in contractual obligations were cited. French competition policy was aimed at controlling restrictive business practices and publicizing competition principles. The activities of the competition authorities had greatly increased in recent years with efforts aimed at maintaining access to markets, preventing unfair competition and assuring consumer protection. These activities had been publicized in periodic reports and in seminars. In the light of the globalization of competition, the authorities had established two centres for international cooperation where personnel from other countries were trained to come to grips with competition issues.

## Chapter II

## CONSIDERATION OF TEXTS AND PROCEEDINGS AT THE CLOSING PLENARY

### A. Consideration of texts

[To be completed]

### B. Closing statements

[To be completed]

## Chapter III

## ORGANIZATIONAL MATTERS

### A. Opening of the session

38. The twelfth session of the Intergovernmental Group of Experts on Restrictive Business Practices was opened on 18 October 1993 by Mr. Carlos Fortin, Deputy to the Secretary-General of UNCTAD.

### B. Election of officers

(Agenda item 1)

39. At the 1st plenary meeting of its twelfth session, on 18 October 1993, the Intergovernmental Group of Experts elected the following Bureau:

| | | |
|---|---|---|
| **Chairman**: | Mr. Roberto Villambrosso | (Argentina) |
| **Vice-Chairmen**: | Mr. Jorge Fernández Baca | (Peru) |
| | Mr. Wyoso Prodjowarsito | (Indonesia) |
| | Mr. Youri B. Afanasiev | (Russian Federation) |
| | Mr. Hartwig Wangemann | (Germany) |
| | Mr. Edward Hand | (United States of America) |
| **Rapporteur**: | Mr. Abdeljebbar Brahime | (Morocco) |

### C. Adoption of the agenda and organization of work

(Agenda item 2)

40. Also at its 1st plenary meeting, the Intergovernmental Group adopted its provisional agenda (TD/B/RBP/93 and Corr.1) as follows:

1. Election of officers

2. Adoption of the agenda and organization of work

3. Review of the operation of and experience arising from the application and implementation of the Set of Multilaterally Agreed

Equitable Principles and Rules for the Control of Restrictive Business Practices

4. Activities relating to specific provisions of the Set:

(a) Studies on restrictive business practices related to the provisions of the Set of Principles and Rules;

(b) Information and consultations on restrictive business practices;

(c) The model law or laws for the control of restrictive business practices, and the Handbook on Restrictive Business Practices Legislation;

(d) Technical assistance, advisory and training programmes on restrictive business practices

5. Work programme on restrictive business practices

6. Provisional agenda for the thirteenth session of the Intergovernmental Group of Experts

7. Other business

8. Adoption of the report of the Intergovernmental Group of Experts.

## D. Provisional agenda for the thirteenth session of the Intergovernmental Group of Experts

(Agenda item 6)

[To be completed]

## E. Membership and attendance

41. For the membership and attendance list, see annex ...

## F. Adoption of the report of the Intergovernmental Group of Experts

(Agenda item 8)

[To be completed]